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**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA
TUCSON DIVISION**

Tohono O'odham Nation, *et al.*,
Plaintiffs,

No. 4:24-cv-00034-JGZ

OPPOSITION TO FEDERAL

1 v.
 2 United States Department of the Interior, *et*
 3 *al.*,
 4 Defendants,
 5 and
 6 SunZia Transmission, LLC,
 7 Intervenor-Defendant.

**DEFENDANTS' SECOND MOTION
 FOR A STAY OF THE CASE IN
 LIGHT OF LAPSE OF
 APPROPRIATIONS**

8 On Wednesday, November 5, 2025, counsel for Defendants emailed counsel for
 9 Plaintiffs to request Plaintiffs' position on Defendants' planned motion to stay the case
 10 given the ongoing federal government shutdown. On Thursday, November 6, counsel for
 11 Plaintiffs responded to counsel for Defendants that she was "checking with [her] clients"
 12 regarding the motion and would "get back to [Defendants' counsel]" ASAP [as soon as
 13 possible]." On the morning of Friday, November 7, 2025, Defendants filed their second
 14 motion for a stay, ECF No. 39, without Plaintiffs' position. For the reasons articulated
 15 below, Plaintiffs oppose the motion.

16 Thirty-seven days have passed since this Court granted Defendants' initial Motion to
 17 Stay, ECF No. 87. During that time, construction activities on the SunZia Transmission Line
 18 have continued in the San Pedro Vally, causing Plaintiffs ongoing irreversible harm. For
 19 instance, in May 2025, Intervenor-Defendant completed a partial assignment of the right-of-
 20 way for the transmission line to Rio/Sol for the purposes of building and stringing a second
 21 transmission line through the San Pedro Valley, which will deepen the harm to this significant
 22 traditional cultural landscape. *See* Ex. 1. Rio/Sol is presently engaged in meetings with
 23 various government officials to obtain the necessary approvals to proceed with construction.
 24 *See* Ex 2. Once Rio/Sol obtains these approvals, construction on the second transmission line
 25 will proceed, further entrenching the harms to the historic properties and cultural resources in
 26 the San Pedro Valley that are of immeasurable significance to Plaintiffs.

27 This Court should deny Defendants' Motion to Continue the Stay, ECF No. 39,
 28

1 because: (1) Defendants have not met their burden to demonstrate why a further stay of this
2 case is necessary or appropriate, particularly since this Court and other courts have directed
3 DOJ staff to continue to work during the Congressional appropriations lapse; (2) Plaintiffs
4 have been, and will continue to be, harmed by a stay while Defendants continue to engage in
5 the underlying harmful activities at issue in this litigation; and (3) resolving this case without
6 further undue delay would best serve judicial economy. *See DeMartini v. Johns*, 693 Fed.
7 App’x 534, 538 (9th Cir. 2017) (noting that the party moving for a stay has the burden to
8 “make out a clear case of hardship or inequity in being required to go forward,” and the court
9 must weigh the competing interests at stake in granting or denying the stay) (citation and
10 internal quotation marks omitted).

11 Defendants have not met their burden of showing that a further stay in this case is
12 warranted or necessary given the lapse in Congressional appropriations for two reasons.
13 First, Defendants’ motion fails to mention any of the three “non-exclusive factors” that the
14 Court must weigh when considering whether to stay proceedings in a case. The Ninth
15 Circuit has identified the three factors for courts to weigh when deciding whether to grant a
16 stay: “(1) the possible damage which may result from the granting of a stay; (2) the hardship
17 or inequity which a party may suffer in being required to go forward; and (3) the orderly
18 course of justice measured in terms of the simplifying or complicating of issues, proof, and
19 questions of law.” *Chinaryan v. City of Los Angeles*, 122 F.4th 823, 825 (9th Cir. 2024)
20 (citation and internal quotation marks omitted). Here, Defendants argued only that “good
21 cause” exists to grant the stay. *See* ECF No. 89 ¶ 6. However, “good cause” is not among
22 the three factors that would justify a stay. *See Chinaryan*, 122 F.4th at 825. Because
23 Defendants failed to even mention the three factors—much less make any showing as to
24 whether they weigh in Defendants’ favor—Defendants have failed to carry their burden of
25 demonstrating that a stay is appropriate, much less necessary.

26 Second, to the extent “good cause” is relevant to the Court’s inquiry, Defendants
27 have not even demonstrated that “good cause” exists to grant the motion for a stay.
28

Defendants insist that a stay is necessary because “much of the federal government . . . has not operated due to the lapse in appropriations,” and as such, “Defendants have not been able to work on this case.” ECF No. 39 ¶ 6. This argument appears to rely solely on the broad language of the Antideficiency Act, 31 U.S.C. § 1342, which does not require the Court to stay this case. Indeed, several courts—including this Court—have denied motions for a stay in light of the lapse in appropriations, finding that the Antideficiency Act and DOJ’s own FY 2026 Contingency Plan authorize DOJ attorneys to work to comply with existing scheduling deadlines. *See, e.g.,* Order Den. Mot. for Stay, *Ctr. for Biological Diversity et al. v. U.S. Forest Serv.*, ECF No. 30, at 1-2, No. 4:24-cv-00405-RM (D. Ariz. Oct. 20, 2025) (citing *Lehman v. U.S. Dep’t of Lab.*, No. 25-11846, 2025 WL 2808472, at *1 (E.D. Mich. Oct. 2, 2025); *In re Camp Lejeune Water Litig.*, No. 7:23-CV-897, 2025 WL 2827029, at *2 (E.D.N.C. Oct. 6, 2025); *PETA v. U.S. Dep’t of Agric.*, 912 F.3d 641, 641 (D.C. Cir. 2019) (Katsas, J., concurring)); Order Den. Mot. for Stay, *Center for Biological Diversity et al. v. U.S. Bureau of Land Mgmt. et al.*, ECF No. 39, at 1-2, No. 4:24-cv-00141-RM (D. Ariz. Oct. 16, 2025) (same); Order, *Ctr. for Biological Diversity v. Noem*, ECF No. 29, No. 25-cv-365-TUC-AMM (JEM) (D. Ariz. Nov. 5, 2011) (same).

Additionally, Defendants would not be substantially prejudiced if this litigation were to move forward. The Ninth Circuit issued its decision remanding the case to this Court on May 27, 2025, *see Tohono O’odham Nation v. U.S. Dep’t of the Interior*, 138 F.4th 1189 (9th Cir. 2025), and issued its mandate on July 21, 2025, *see* Order Setting Status Conf., ECF No. 73. Meanwhile, Defendants continued to work on compiling the Administrative Record until this Court entered its order granting the initial stay on October 3, 2025, *see* ECF No. 89 ¶ 7, a mere two weeks before Defendants’ deadline to provide the Administrative Record to the Parties in this case (i.e., October 17, 2025), *see* Scheduling Order, ECF No. 83. Therefore, contrary to Defendants’ assertions, *see* ECF No. 89 ¶ 7, directing Federal employees to complete an Administrative Record that Defendants have had months to prepare—and that should have been nearly complete at the time the government shutdown on October 1, 2025—

1 does not constitute an inordinate burden.

2 Applying the proper test, it is clear that the three factors weigh against granting
3 Defendants' requested relief. *See Chinaryan*, 122 F.4th at 825. Protected historic properties
4 and cultural resources that are the subject of this litigation will suffer from ongoing damage as
5 a "result from the granting of a stay," and as a result, "Plaintiffs . . . will continue to be,
6 harmed by a stay while Defendants continue to engage in the underlying harmful activities at
7 issue in this litigation." *Id.* Indeed, since the Court's October 3, 2025 Order granting a partial
8 stay, *see* ECF No. 88, the balance of harms has increasingly shifted against any further stay in
9 this case. Construction activities on the SunZia Project, including in the San Pedro Valley,
10 have continued during the pendency of the stay, causing Plaintiffs ongoing and irreversible
11 harm. Additionally, Rio/Sol is in the final stages of planning and permitting for the
12 construction of the second transmission line along Defendant-Intervenor's right-of-way,
13 including by engaging with the Arizona Corporation Commission regarding the necessary
14 local approvals. *See, e.g.,* Welch Decl. ¶ 9; Ex. 1; Ex. 2. This second line will effectively
15 *double* the number of transmission towers, wires, and ground surface and visual impacts in
16 the San Pedro Valley, exponentially increasing the harm to Plaintiffs' substantial and
17 carefully delineated, concrete interests in the historic properties and cultural resources therein.
18 *See* Welch Decl. ¶ 8. This destruction of precious, irreplaceable cultural and archaeological
19 resources is precisely the harm Plaintiffs are seeking to address through this litigation and
20 underscores the need to promptly resolve the issues before the harm becomes further
21 entrenched. *See Nevada v. United States*, No. 3:18-cv-569-MMD-CBC, 2019 WL 11029477,
22 at *1 (D. Nev. Jan. 2, 2019) (denying motion to stay due to lack of appropriations "in light of
23 the alleged irreparable harm and the government's refusal to assure that it will not proceed
24 with the asserted harmful conduct" (shipment of plutonium) before resolution of motion for
25 preliminary injunction).

26 Finally, allowing this litigation to proceed would promote judicial economy. *See*
27 *Chinaryan*, 122 F.4th at 825. Over a month has passed since Defendants moved for a stay in
28

1 this case, ECF No. 89, and Defendants once again seek an indefinite stay, one that can last
 2 for an unknown length of time—the pendency of the government shutdown, *id.* ¶ 6.¹
 3 Extending a stay of this litigation for a currently unknown period would further prejudice
 4 Plaintiffs and undermine the judicial economy benefits of the expedited briefing sought in
 5 this case. *See Native Songbird Care & Conservation v. Foxx*, No. 13–cv–02265–JST, 2013
 6 WL 5609320, at *3 n.3 (N.D. Cal. Oct. 11, 2013) (“Given the fact that time is of the essence
 7 in this case, and the fact that an indefinite stay could potentially prejudice Plaintiffs, the
 8 Court will not stay this case because of the lapse of appropriations.”). Accordingly,
 9 Plaintiffs respectfully request that this Court deny Defendants’ Motion to Continue the Stay.

10 In the alternative, Plaintiffs respectfully requests that the Court at least order
 11 Defendants to produce the Administrative Record. As explained, producing the
 12 Administrative Record would not place an undue burden on Defendants, *see supra* at 4, and
 13 would promote judicial economy by allowing the Parties to commence their review of the
 14 record during the ongoing government shutdown, allowing the Parties to move quickly into
 15 resolving any record issues and merits briefing once appropriations are restored. Therefore,
 16 Plaintiffs respectfully request that the Court at least order Defendants to complete the
 17 Administrative Record within two weeks of its order on Defendants’ Motion to Stay, ECF No.
 18 89—i.e., within a time commensurate with the length of time the shutdown impacted
 19 Defendants’ efforts to compile the record (from October 3 to October 17, 2025).²

21 ¹ Indeed, many mainstream outlets are reporting that there is no end in sight to the lapse in
 22 appropriations. *See, e.g.,* Juliana Kim, *How would the government shutdown affect*
 23 *Thanksgiving travel? Here’s what to know*, NPR (Nov. 6, 2025),
 24 [https://www.npr.org/2025/11/06/nx-s1-5599582/government-shutdown-airport-](https://www.npr.org/2025/11/06/nx-s1-5599582/government-shutdown-airport-thanksgiving-travel)
 25 [thanksgiving-travel](https://www.npr.org/2025/11/06/nx-s1-5599582/government-shutdown-airport-thanksgiving-travel); Catie Edmondson & Megan Mineiro, *Democrats Dig In on Shutdown*
After Election Wins, NY TIMES (Nov. 5, 2025),
[https://www.nytimes.com/2025/11/05/us/politics/democrats-trump-shutdown-](https://www.nytimes.com/2025/11/05/us/politics/democrats-trump-shutdown-filibuster.html)
[filibuster.html](https://www.nytimes.com/2025/11/05/us/politics/democrats-trump-shutdown-filibuster.html).

26 ² Defendants also suggest this relief in the alternative. *See* ECF No. 89 ¶ 7. However,
 27 Defendants request “an extension of time that commensurate with the length of the
 28 shutdown—or approximately 33 days— from the current deadline of November 17, 2025

Dated: November 7, 2025

Respectfully submitted,

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(to and including December 22, 2025).” ECF No. 89 ¶ 7. Defendants misstate the applicable deadline. As stated above, this Court ordered Defendants to provide the Administrative Record to the Parties by October 17, 2025. *See* Scheduling Order, ECF No. 83. November 17, 2025 was the date by which the Parties had to notify Defendants of “any issues regarding the completeness of the record and/or any issues regarding the admission of extra-record evidence.” *Id.* Plaintiffs believe that the two-week deadline is more appropriate under these circumstances.

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